

## **REAL ESTATE COMMISSION MEETING**

Heber M. Wells Building

Room 210

9:00 a.m.

June 16, 2010

### **MINUTES**

#### DIVISION STAFF PRESENT:

Deanna Sabey, Division Director  
Dee Johnson, Enforcement Director  
Mark Fagergren, Education and Licensing Director  
Traci Gundersen, Assistant Attorney General  
Jennie Jonsson, Hearing Officer  
Renda Christensen, Board Secretary  
Tiffeni Wall, Real Estate Education Coordinator  
Van Kagie, Investigator  
Jill Childs, Assistant Board Secretary

#### COMMISSION MEMBERS PRESENT:

Gary R. Hancock, Chair  
Kay Ashton, Vice Chair  
H. Blaine Walker, Commissioner  
Stefanie Tugaw-Madsen, Commissioner

#### GUESTS:

Tammy Lund	Lance Miller
Kevin Swenson	Chad Ahearn
Curtis Bullock	Jack Marinello

The June 16, 2010 meeting of the Utah Real Estate Commission began at 9:00 a.m. with Chair Hancock conducting.

### **PLANNING AND ADMINISTRATIVE MATTERS**

Commissioner Houston will be excused from the meeting to day.

#### Approval of Minutes

The Minutes from the May 19, 2010 meeting were approved as written.

### **DIVISION REPORTS**

#### DIRECTOR'S REPORT – Deanna Sabey

Director Sabey discussed SB 161, passed on March 16, 2010, which deals with property transfer fees. The bill prohibits transfer fees and private transfer fees to an entity, builder, or homeowner's associations, depending on the type of property. The bill was set up to prohibit transfer fees, as that term is defined. This law does not prohibit reinvestment fee covenants. Reinvestment fee covenants are

covenants that an HOA (for example) can put on a property so it would be both a burden and a benefit to the property as well. There is now a notice requirement for reinvestment fee covenants. The statute does prohibit transfer fee covenants where there is no benefit to the land, in addition to the burden on the land.

There have been some federal developments on private transfer fee issues. The National Association of Realtors (NAR) commented on private transfer fees at HUD's request. HUD has taken the position that any fees attached to FHA properties that are private transfer fees are a violation of HUD regulations. The Federal Housing Finance Agency, the regulator for FannieMae and Freddie Mac, has yet to provide clarification. It is anticipated they will lean in the same direction.

Director Sabey said the Division's website now has a link to various foreclosure prevention resources. There has been a marked increase in foreclosure loan modifications and short sales. This link is designed to help consumers know what the course of action is best for them in their circumstances. The Utah Foreclosure Prevention Task Force has put together a workbook that can be very helpful. Also on our website is a list of HUD-approved agencies for foreclosure prevention resources and a link for the Federal Making Homes Affordable program.

The Division has received confirmation for Kay Ashton to be re-appointed as a member of the Real Estate Commission. His new term will expire on June 30, 2014.

#### ENFORCEMENT REPORT – Dee Johnson

Mr. Johnson reported in May the Division received 72 complaints; screened 38 complaints; opened 7 cases; closed 15 cases; leaving the total number of real estate cases at 76.

There are four stipulations to review this month. All of the respondents were given a chance to appear, but have chosen not to appear.

#### Stipulations

Brent B. Osborne

Calab Wertz

Lowell S. Murray

Micah W. Pearson

#### EDUCATION AND LICENSING REPORT – Mark Fagergren

Mr. Fagergren said in the first five months of this year the number of active real estate licensees has grown by  $\frac{3}{4}$  of 1%, and the inactives have dropped 7.5%. There has been a net decline of 379 licensees since the first of the year.

The Division's final Caravan will be held tomorrow, Thursday, June 17<sup>th</sup>, in Sandy. This is the first time the Division has held a Caravan presentation in Salt Lake.

Mr. Fagergren said Pearson Vue was in town last week for four days to review the

exam questions. Each question has to be reviewed to make sure it is accurate given statutory and rule changes. The process started with 295 questions in a pool for the sales agent's state portion exam. This is a 50-question test and there are three different forms of the test. In the broker state component there are 100 questions on the exam, and there are two forms of that test.

There are two areas that need work after the exam review meeting: HUD-1 form, where the old HUD-1 form has been replaced by a new version; and the REPC and other forms have been added as a new series of questions. The student will be handed a HUD settlement statement and a REPC. They are then asked questions involving these forms. Those changes will be made and implemented in October of this year. It takes that long to write the questions, and have Pearson Vue's statisticians review them.

There has been a lot of discussion this last year about mortgage licensing requirements, and Mr. Fagergren gave the Commission and members of the public an update. From 2007 to 2009, mortgage has lost 32% of their licensees. Starting the first of the year, out of those remaining numbers, 43% failed to meet the records transition deadline that happened on May 31, 2010. That 43% will only have licenses until December 31, 2010, and after that they will have to reapply if they want a license. They will need to take 60 hours of pre-license education and pass an NMLS national and state test.

Mr. Fagergren said in his history, the Division has never had something so prominently announced with notifications provided as with this issue. Much of our discussions over the last year and a half have been reminders; sending three personal letters to mortgage licensees home addresses; an e-mail blast; Caravans, etc. The Division's website is covered with mortgage deadlines, charts, and announcements. When we started the Caravan April 20, 2010, mortgage licensees who had completed their transition of records stood at 26%. By the end of Caravan May 31, 2010, 57% had completed the transition requirement. We are now getting calls from the 43% who failed to transition by the May 31<sup>st</sup> deadline. For those in this category that want to start over, the testing centers will be packed the longer they wait, so they had better start now to avoid lengthy scheduling delays. As of June 2, 2010 the mortgage licensing staff received 4,000 submissions that they will now be working on.

The next deadline for mortgage licensees is July 29, 2010 for the certification of their exam and education. All of this is in preparation for their license renewal that will open up in November.

Mr. Fagergren mentioned some modification enhancements on the RELMS system on the Division's website. Historically, there have been problems with licensees who have created an account and then forgotten their password. If that happens, licensees will call the Division, and we have to send them to Utah Interactive to receive a new password. We have convinced Utah Interactive to make it more

user-friendly so now a licensee can reset his own password while accessing the on-line RELMS system. The other issue is licensees practicing under different names than on the DRE records. Licensees are required to provide a current government document (i.e., drivers license, marriage certificate, divorce decree, etc.) for the DRE to change names entered into our licensing database. Utah Interactive is working on this issue.

Mr. Fagergren said the process for banking CE hours is somewhat a convoluted process. The current process is the provider sends the information to Pearson Vue; Person Vue (DRE testing contractor) sends the information to the Division; and the Division then passes the information to Utah Interactive. We have now taken out that last step so that when the data comes to us; Utah Interactive's database will instantaneously be reading our files. This will help shorten the timeframe for those who are trying to renew but have waited until late in the month to take their classes. When our licensing staff banks CE hours, it will now be instantaneously shown on the RELMS system. This enhancement should better assist our licensees and avoid frustrations and unnecessary banking delays.

Another function in the RELMS system that is being improved is the Licensee Lookup. Utah Interactive is looking directly at the Division's database. For example, if we were suspending someone's license today, within ten minutes Utah Interactive will be able to see that same information. This too should provide more timely and accurate information to our licensees and the public.

## COMMISSION AND INDUSTRY ISSUES

### Discussion of Proposed Rules – Jennie Jonsson

Ms. Jonsson said last month a vote was taken on rule R162-4-1 that had been out for public comment. The vote authorized Ms. Jonsson to make the rule effective unless a comment came in from the public. There was one comment that was received, and therefore the comment was given to the Commission and Division for their review. The options currently available are to make the rule effective as written, or make a change and have the rule go through the public comment period again. After discussion, a motion was made to make the rule effective. The vote is as follows: Chair Hancock, yes; Vice Chair Ashton, yes; Commissioner Walker, yes; Commissioner Tugaw-Madsen, yes. Director Sabey concurred with the motion. The motion passed.

Ms. Jonsson said there is another rule ready to be made effective. The public comment period has passed and no comments were received. Rule R162-3 changes our continuing education to track with the statute as to how many hours are now required. A motion was made to approve the rule. The vote is as follows: Chair Hancock, yes; Vice Chair Ashton, yes; Commissioner Walker, yes; Commissioner Tugaw-Madsen, yes. Director Sabey concurred with the motion. The motion passed.

Ms. Jonsson said upon review of the Open Public Meetings Law the Division is

required to have a rule in place to hold an electronic meeting. R162-10-7, Electronic Meetings, was written to keep us in compliance with the Open Public Meetings Law. Commissioner Walker suggested that wording be changed to reflect the "Division Director or his/her designee" in place of "a Division staff member shall serve as the presiding officer at any electronic meeting." A motion was made to accept the rule with this change and send it out for public comment. The vote is as follows: Chair Hancock, yes; Vice Chair Ashton, yes; Commissioner Walker, yes; Commissioner Tugaw-Madsen, yes. Director Sabey concurred with the motion. The motion passed.

Mr. Marinello said there is a bulletin coming out from the Insurance Commissioner that governs title insurance. This bulletin will address unlicensed activity by title insurance agents. Mr. Johnson said what brought this to the forefront is short sales. Many real estate licensees are not as knowledgeable as they should be, especially on short sales. In looking for someone to turn that responsibility over to, the agents have turned to title insurance agents. This bulletin will state that title insurance agents shall not provide these services, and it will be seen as unlicensed activity.

#### **CLOSED TO PUBLIC**

The open session of the meeting was closed. A motion was made to hold an Executive Session to review the Stipulation of Brent Osborne as presented to the Commission. The vote is as follows: Chair Hancock, yes; Vice Chair Ashton, yes; Commissioner Walker, yes; Commissioner Tugaw-Madsen, yes. Director Sabey concurred with the motion. The motion carried. The Executive Session was held from 10:12 a.m. until 10:37 a.m.

#### **OPEN TO PUBLIC**

Director Sabey read the results of the Executive Session into the record. The Commission rejected the Stipulation for Brent Osborne. Ms. Jonsson said the Commission suggested it would be appropriate to fine Mr. Osborne \$500.00 and make it payable within six months instead of one year. The Commission also suggests it would be appropriate to approve his license but suspend it until his criminal case is resolved. If Mr. Osborne is found not guilty or the case is dismissed without him entering a plea, the Division would be able to lift the suspension, providing the \$500.00 has been paid. If the case is resolved in any other way or is pending at the time of renewal, he would be requested to appear before the Commission. Mr. Johnson will inform Ms. Gundersen of the result of this Executive Session, and the hearing will go on as scheduled today at 3:30 p.m.

#### **CLOSED TO PUBLIC**

The open session of the meeting was closed. A motion was made to hold an Executive Session to review the remaining Stipulations presented to the Commission. The vote is as follows: Chair Hancock, yes; Vice Chair Ashton, yes; Commissioner Walker, yes; Commissioner Tugaw-Madsen, yes. Director Sabey concurred with the motion. The motion carried. The Executive Session was held

from 10:40 a.m. until 10:56 a.m.

**OPEN TO PUBLIC**

Director Sabey read the results of the Executive Session into the record. The Stipulations of Caleb Wertz, Lowell S. Murray, and Micah W. Pearson were accepted by the Commission and the Director.

A motion was made to adjourn the meeting until the 2:00 scheduled Commissioner Training. The vote is as follows: Chair Hancock, yes; Vice Chair Ashton, yes; Commissioner Walker, yes; Commissioner Tugaw-Madsen, yes. Director Sabey concurred with the motion. The motion carried and the meeting was adjourned.

**OPEN TO PUBLIC**

2:00 Tony Patterson, Assistant Attorney General  
Commissioner Training

**LICENSE HEARINGS**

3:30 Brent Osborne – Appeal of Order  
Mark Moffitt, Attorney  
Jim Bradshaw, Attorney  
Mark Kozak, Attorney

4:45 Jeremiah Flanery – Application for License

**CLOSED TO PUBLIC**

The open session of the meeting was closed. A motion was made to hold an Executive Session to review the hearings that were held. The vote is as follows: Chair Hancock, yes; Vice Chair Ashton, yes; Commissioner Walker, yes; Commissioner Tugaw-Madsen, yes. Director Sabey concurred with the motion. The motion carried. The Executive Session was held from 5:21 p.m. until 5:38 p.m.

**OPEN TO PUBLIC**

The Commission and Division Director have approved the Stipulation of Brent Osborne.

A motion was made to adjourn the meeting. The vote is as follows: Chair Hancock, yes; Vice Chair Ashton, yes; Commissioner Walker, yes; Commissioner Tugaw-Madsen, yes. Director Sabey concurred with the motion. The motion carried. The meeting was adjourned at 5:40 p.m.